

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Implement the  
Commission's Procurement Incentive Framework  
and to Examine the Integration of Greenhouse Gas  
Emissions Standards into Procurement Policies.

Rulemaking 06-04-009  
(Filed April 13, 2006)

**REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY  
(U 902 M) AND SOUTHERN CALIFORNIA GAS COMPANY  
(U 904 G) ON PROPOSED DECISION**

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January 8, 2007

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**I.  
INTRODUCTION**

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric ("SDG&E") and Southern California Gas Company ("SoCalGas") respectfully submit these reply comments concerning the Phase I Proposed Decision of President Peevey and ALJ Gottstein (the "PD"), issued on December 13, 2006.

As discussed more fully below, SDG&E and SoCalGas disagree with the assertion by the Community Environmental Council ("Council") that use of the term "net emissions" in SB 1368 indicates an intent by the Legislature to require that a lifecycle emission analysis be applied to all baseload generation in order to determine compliance with an emissions performance standard ("EPS").<sup>1/</sup> Rather, it is clear that the Legislature intentionally refrained from adopting measures that would require consideration of emissions other than from the production of electricity, except in the case of biogenic

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<sup>1/</sup> See, Community Environmental Council Comments, p. 2.

resources. In addition, SDG&E and SoCalGas agree with the concerns raised by Pacific Gas & Electric Company (“PG&E”) and Sacramento Municipal Utility District (“SMUD”) regarding the PD’s proposal to prohibit “firming” of renewables contracts with unspecified resources. SDG&E and SoCalGas also agree with the conclusion reached by Southern California Edison Company (“SCE”) that the term “linked” used in the PD is ambiguous.

## II. SB 1368 DOES NOT CONTEMPLATE LIFECYCLE EMISSION ANALYSIS FOR BASELOAD GENERATION

The Council incorrectly contends that SB 1368 “uses the term ‘net emissions’ in a manner that suggests the Legislature intended a lifecycle emission analysis for all baseload generation.”<sup>2/</sup> SB 1368 directs the Commission to establish an EPS at an emission rate that is “no higher” than the emissions rate of a combined-cycle gas turbine (“CCGT”) powerplant, and expressly limits the emissions to be considered to those resulting from the production of electricity:

In determining the rate of emissions of greenhouse gases for baseload generation, the commission **shall include the net emissions resulting from the production of electricity by the baseload generation.**<sup>3/</sup>

SB 1368 contains no language supporting the Council’s argument that the Legislature intended a “lifecycle emissions” analysis of the fuel used for baseload generation to be applied. In fact, it is clear that the Legislature intentionally refrained from adopting measures that would require consideration of emissions other than from the production of electricity, except in the case of biogenic resources. As the Council

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<sup>2/</sup> *Id.*

<sup>3/</sup> Senate Bill (SB) 1368, § 8341(d)(2) (Stats. 2006, Ch. 598) (emphasis added).

acknowledges, section (d)(4) which immediately follows section (d)(2) cited above, states that in calculating the GHG emissions from biomass, biogas, and landfill gas energy, the Commission “shall consider net emissions from the process of growing , processing, and generating electricity from the fuel source.”<sup>4/</sup> If the Legislature had intended to implement a lifecycle emissions analysis of fuels other than biogenic resources, the Legislature would have so stated, as it did in (d)(4) in reference to biogenic fuels.

The statutory language and legislative history underlying SB 1368 are void of any expression of intent by the Legislature to impose a lifecycle analysis of fuels other than biogenic fuels. Accepted rules of statutory construction require that all words be given full weight and read in the context when determining legislative intent.<sup>5/</sup> Where, as here, the intent of the Legislature is clear, the PD may not impose a dissimilar standard.

### **III. THE PD SHOULD CLARIFY THAT UNSPECIFIED SUBSTITUTE ENERGY MAY BE USED TO “FIRM” RENEWABLE ENERGY CONTRACTS**

In their Opening Comments, PG&E and SMUD express concern regarding the PD’s conclusion that *all* unspecified resources are prohibited to the extent that such resources cannot demonstrate compliance with the EPS.<sup>6/</sup> SDG&E and SoCalGas agree with the suggestion by PG&E and SMUD that some limited exception should be made for firming renewables. This will promote the goal of encouraging procurement and development of renewable energy resources.

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<sup>4/</sup> Community Environmental Council Comments, p. 4 (citing SB 1368, § 8341(d)(4)).

<sup>5/</sup> See, D.04-04-020, 2004 Cal. PUC LEXIS 137, pp. \*6-7.

<sup>6/</sup> PG&E Comments, p. 3; SMUD Comments, pp. 3-4.

SDG&E and SoCalGas also agree with PG&E’s proposal that the utilities should “maintain a limited measure of contracting flexibility over a contractually specified time period for the use of substitute energy to support contracts covered by the EPS.”<sup>7/</sup> While PG&E proposes a limit of no more than 15% of the forecasted or intended energy deliveries of the contract as defined over a contractually specified time period, SDG&E and SoCalGas propose a higher percentage that is consistent with the California Energy Commission’s (“CEC”) Renewable Portfolio Standard Eligibility Guidebook. Under the CEC’s eligibility requirements for “Hybrid Systems,” a facility meets requirements to be an eligible renewable as long as the facility does not use more than 25% fossil fuel for its total generation.<sup>8/</sup>

#### **IV. THE PD SHOULD BE REVISED TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MULTIPLE CONTRACTS OF LESS THAN FIVE YEARS WILL BE CONSIDERED “LINKED”**

In addition to the comments discussed above, SDG&E and SoCalGas share the concern expressed by SCE that the term “linked,” as used in the PD is ambiguous.<sup>9/</sup> SDG&E and SoCalGas agree with SCE that the PD should be revised to clarify the meaning of the term “linking” in order to prevent imposition of vague *ex post facto* standards. Given the interim nature of the EPS, SDG&E and SoCalGas recommend that Finding of Fact No. 162 and the attendant discussion be omitted from the PD altogether.

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<sup>7/</sup> PG&E Comments, p. 4.

<sup>8/</sup> CEC-300-2006-007-F, Renewable Energy Program, “Renewables Portfolio Standard Eligibility Guidebook,” April 2003, pp. 16-17. It is worth noting that even if the non-specific power was assigned the emissions of coal, with a limit of 25%, the firmed renewable would have GHG emissions well below the EPS.

<sup>9/</sup> SCE Comments, pp. 7-10; *see also*, Alliance for Retail Energy Markets (“AReM”) Comments, pp. 6-7.

**V.  
CONCLUSION**

For the reasons set forth herein, the PD should be revised in accordance with the above and to incorporate the modifications proposed in the Opening Comments of SDG&E and SoCalGas submitted January 2, 2007.

Respectfully submitted this 8th day of January, 2007.

/s/Aimee M. Smith

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of **REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON PROPOSED DECISION** has been electronically mailed to each party of record on the service list in R.06-04-009. Any party on the service list who has not provided an electronic mail address was served by placing copies in properly addressed and sealed envelopes and depositing such envelopes in the United States Mail with first-class postage prepaid.

Copies were also sent via Federal Express to the Commissioner Michael R. Peevey and the Assigned Administrative Law Judges Charlotte TerKeurst, Jonathan Lakritz, and Meg Gottstein.

Executed this 8<sup>th</sup> day of January, 2007 at San Diego, California.

/s/ Jodi Ostrander

Jodi Ostrander

## CALIFORNIA PUBLIC UTILITIES COMMISSION

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**Proceeding: R0604009 - CPUC - PG&E, SDG&E,**  
**Filer: CPUC - PG&E, SDG&E, SOCALGAS, EDISON**  
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